

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DOUBLE D FARM CORP.,	:	Case No. 1:07 CV 3577
	:	
Petitioner,	:	
	:	JUDGE KATHLEEN O'MALLEY
v.	:	
	:	
UNITED STATES OF AMERICA,	:	<u>ORDER</u>
	:	
Respondent.	:	

This case arises on Respondent United States of America's ("the United States") *Motion to Modify and Correct Order of Dismissal Entered May 23, 2008* ("*Motion to Modify*") (ECF Doc. 15). Petitioner Double D Farm Corp. ("Double D") filed a response in opposition to the *Motion to Modify* on June 13, 2008 (ECF Doc. 16). For the reasons stated below, the Court hereby **RE-OPENS** this case for the limited purposes of (1) clarifying the Order issued May 23, 2008; and, (2) issuing a more detailed Judgment Entry dismissing this case. The *Motion to Modify* is mooted and termed accordingly.

On May 23, 2008, the Court issued an Order resolving both Double D's motion to quash an Internal Revenue Service ("IRS") administrative third-party summons ("IRS Summons") issued to Double D's accountant, Melvin Rubin ("Rubin"), and the United States' cross-motion to enforce the IRS Summons. (ECF Doc. 13.) The Court's May 23, 2008 Order summarizes the Court's ruling as follows:

Accordingly, the Court **GRANTS, in part**, the United States' *Motion to Enforce Internal Revenue Service Summons* (ECF Doc. 10). Rubin is hereby **ORDERED** to produce all documents in his possession which are responsive to the Summons, with the exception of documents related to bank records. With respect to bank records responsive to the Summons, in order to obtain copies of bank records in Rubin's possession, the United States is hereby **ORDERED** to provide Rubin with a list of the responsive bank records in the IRS's possession within seven (7) days of

the date of this Order. In response, within seven (7) days of the date of the receipt of the above list from the IRS, Rubin is hereby **ORDERED** to either: (1) file an affidavit attesting that he has produced all responsive documents that are not duplicates of those listed or (2) simply produce all responsive documents in his possession, including duplicates.

In light of this Order enforcing the IRS Administrative Summons, Double D Farm Corp.'s Petition to Quash is **DENIED** and this case is **DISMISSED**.

(ECF Doc. 13 at 17-18.) Although this Order fully resolves the case, the United States *Motion to Modify* asserts that the Court's Judgment Entry (ECF Doc. 14), which was issued on the same day, failed to grant the appropriate relief to the United States. The Judgment Entry expressly refers to the May 23rd Order (ECF Doc. 13) quoted above, and states, in its entirety: "For the reasons stated in the Court[']s Order of this date, this case is **DISMISSED**." The United States contends that the Judgment Entry should have expressly re-stated the affirmative relief granted to the United States in the May 23rd Order (ECF Doc. 13), and that this "clerical error [is] susceptible of easy and speedy reversal" pursuant to Rule 60(a) of the Federal Rules of Civil Procedure. (ECF Doc. 15 at 5.) In response, Double D argues that the error is not "clerical" under Rule 60. (ECF Doc. 16.)

The Court finds that re-opening the case to clarify the relief to which the United States is entitled under the May 23rd Orders is appropriate. No prejudice will result given that the Court is not altering its judgment in any way. The Court does not, however, find that it erred in dismissing the case on May 23, 2008. Although the May 23rd Order required further action on the part of Rubin, the Order, to which the May 23rd Judgment Entry expressly referred, expressly denied Double D's motion to quash and granted the United States' motion to enforce the IRS Summons. The Court thus resolved the petition giving rise to the case, as well as all of the pending motions. Further, the Court's jurisdiction to enforce Rubin's compliance with the Court's Order is implied, even after the case is dismissed.

CONCLUSION

Accordingly, the Court hereby **RE-OPENS** this case for the limited purpose of issuing a more detailed judgment entry describing the relief granted and dismissing the case. The United States' *Motion to Modify* (ECF Doc. 15) is **TERMED**.

IT IS SO ORDERED.

s/Kathleen M. O'Malley

**KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE**

Dated: July 11, 2008